

D.T.E. 03-76-E

August 20, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

In the Matter of:

Massachusetts Local Telephone Co., Inc.
Optical Telephone Corp.

D.T.E. 03-76-5
D.T.E. 03-76-10

I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 03-76, Vote and Order to Open Investigation at 1 (2004) (“Vote and Order”); Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed.

G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in additional penalty. Id. If the Department finds that a common carrier has neglected to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

II. PROCEDURAL HISTORY

On February 3, 2004, the Department opened separate investigations into the failure by 15 telephone companies to file annual returns and pay statutory forfeitures to the Commonwealth for both years 2001 and 2002, and into the failure by an additional 25 telephone companies to file their 2002 annual returns and pay statutory forfeitures. Vote and Order. The Department determined that 15 of these 40 companies were registered during both 2001 and 2002 to provide telecommunications services in the Commonwealth, because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2001 and 2002. Id. at 1.

The Department opened investigations into the 40 companies, docketing each separately as indicated in Appendix A and Appendix B to this Order.¹ This Order pertains to the following dockets: Massachusetts Local Telephone Co., Inc. (“Massachusetts Local”), D.T.E. 03-76-5, and Optical Telephone Corp. (“Optical”), D.T.E. 03-76-10.

¹ In the Vote and Order, the Department opened investigations regarding Paramount International Telecommunications, Inc. (“Paramount”), docketed as D.T.E. 03-76-12, and TeleCents Communications, Inc. (“TeleCents”), docketed as D.T.E. 03-76-34. However, the Department subsequently discovered that TeleCents had in fact complied with the annual return filing requirement, and did not owe an overdue annual return or statutory forfeitures. Paramount complied with the Notice of Investigation and Hearing (April 21, 2004) by filing its annual returns for 2001 and 2002, each showing no intrastate revenues. The Department notified the companies that they were in compliance, and that it had cancelled the hearings involving TeleCents and Paramount and dismissed both cases. D.T.E. 03-76-34, Hearing Officer Memorandum Re: TeleCents Communications, Inc. (April 30, 2004); D.T.E. 03-76-12, Hearing Officer Memorandum Re: Paramount International Telecommunications, Inc. (May 14, 2004).

Pursuant to Notice (“Notice”) duly issued,² the Department conducted public and evidentiary hearings in these proceedings on April 14, 2004, and May 25, 2004. Neither party entered an appearance or filed comments. The evidentiary record in each proceeding contains six exhibits.³

III. ANALYSIS AND FINDINGS

A. Introduction

Massachusetts Local Telephone Co. and Optical Telephone Corp. were registered common carriers of telecommunications services during years 2001 and 2002, because each of the companies had an approved tariff and statement of business operations on file with the Department during those years. D.P.U. 93-98, at 12. Therefore, Massachusetts Local and Optical telephone companies were obligated to file annual returns for 2001 and 2002 pursuant to G.L. c. 159, § 32; G.L. c. 166, § 11. Vote and Order at 1-2.

² The Department sent a Notice of Investigation and Hearing to the last known address of each of the companies on February 4, 2004 and April 21, 2004, and published the Notice in the Boston Globe on April 26, 2004.

³ Because the exhibits in each proceeding are identical types of documents, all references to exhibits in this Order will omit the docket number and simply refer to the corresponding exhibit number; e.g., “Exhibit 1.” Exhibit 1 is the company’s statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company’s tariff, as filed with the Department. Exhibit 3-01 is the July 1, 2002 letter that the Department’s Telecommunications Division sent to the company, extending the 2001 annual return filing deadline to July 22, 2002. Exhibit 3-02 is the August 22, 2003 letter that the Department’s Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4-01 is the company’s late-filed 2001 annual report. Exhibit 4-02 is the company’s late-filed 2002 annual report.

Prior to commencing these investigations, the Department granted extensions, in both 2001 and 2002, for filing of annual returns past the March 31 annual deadline without incurring the statutory forfeiture, but only if the company filed by the new deadline.⁴ For the 2001 annual return, the Department extended the filing deadline to July 22, 2002, and notified all telecommunications companies operating in the Commonwealth by certified mail. Id. at 2. For the 2002 annual return, the Department extended the filing deadline to September 19, 2003, and again notified the telecommunications companies by certified mail. Id. The Department did not grant any additional extensions. The Department served Notice of its investigation and hearing upon the companies, advising them that the Department was investigating the company's neglect to file annual returns on time and pay the statutory forfeitures owed, and that failure to respond or to produce the information requested in the notice would lead to adverse findings of fact and orders for corrective action. See Vote and Order at 2-4.

B. Massachusetts Local Telephone Co.

Massachusetts Local filed both its 2001 and 2002 annual returns on April 28, 2004 (Exhs. 4-01, 4-02). Both returns indicated that the company earned significant intrastate revenues in the reporting years (Exhs. 4-01, 4-02). However, the company has not paid the

⁴ The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32. The extension of the filing deadline applied only to companies that filed by the new deadline. Because Massachusetts Local and Optical did not file their annual returns by the extended deadline the Department offered, their forfeitures are calculated from the original statutory annual due date of March 31. See D.T.E. 02-13-A; D.T.E. 02-13-D; D.T.E. 02-13-F.

statutory forfeitures owed for either of these late-filed annual returns. Accordingly, because Massachusetts Local neglected to file its 2001 annual return by March 31, 2002, the Department finds that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated from that date, up to April 28, 2004, when Massachusetts Local filed its 2001 return late. In addition, because Massachusetts Local neglected to file its 2002 annual return by March 31, 2003, the Department finds that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated from that date, up to April 28, 2004, when it filed its 2002 return late.

The Department also must consider whether the company's refusal or neglect to file was unreasonable. G.L. c. 166, § 12. Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. Massachusetts Local Telephone Co. has failed to file timely annual returns and to pay the accrued statutory forfeitures associated with the late-filed returns. Moreover, in addition to failing to appear on either of the two hearing dates, Massachusetts Local failed to respond on a timely basis to notices from the Department's Telecommunications Division reminding the company that it failed to file its annual returns, and extending the filing deadline (Exhs. 3-01, 3-02). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to comply with the Commonwealth's statutory

requirements, Massachusetts Local's failure to respond in a timely manner compounds its neglect of its reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part of Massachusetts Local to pay the statutory forfeitures is unreasonable. Therefore, in addition to the daily forfeiture, the additional \$500 forfeiture, as provided in G.L. c. 166, § 12, is applicable to Massachusetts Local for failure to pay statutory forfeitures associated with the late-filed 2001 and 2002 annual returns.

The daily forfeiture⁵ for the 2001 annual return, accrued between March 31, 2002, and April 28, 2004, a total of 758 days overdue, is \$11,145. With the additional forfeiture of \$500, the total forfeiture Massachusetts Local owes for 2001 is \$11,645. The daily forfeiture for the 2002 annual return, accrued between March 31, 2003, and April 28, 2004, a total of 393 days overdue, is \$5,445. With the additional forfeiture of \$500, the total forfeiture Massachusetts Local owes for 2002 is \$6,170. The total forfeiture Massachusetts Local Telephone Co. owes is therefore \$17,815.

C. Optical Telephone Corp.

Optical filed its 2001 annual return on September 5, 2002 (Exh. 4-01) and its 2002 annual return on April 5, 2004 (Exh. 4-02). Both returns indicated that Optical earned significant intrastate revenues in the reporting years (Exhs. 4-01, 4-02). However, the

⁵ Pursuant to G.L. c. 166, § 12, the statutory forfeitures are calculated at the rate of five dollars per day for the first 15 days overdue, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the date the overdue annual return was filed.

company has not paid the statutory forfeitures owed for either of these late-filed annual returns.

Optical contacted the Department by telephone on the day of the first hearing, April 14, 2004, after the hearing was concluded, requesting information on its annual return filings and the statutory forfeitures owed. The Hearing Officer informed the company by memorandum that Optical owed forfeitures for the overdue 2001 and 2002 returns and should pay the forfeitures as soon as possible, and that Optical could participate in the upcoming continued hearing. D.T.E. 03-76-10, Hearing Officer Memorandum Re: Optical Telephone Corporation (April 15, 2004) (“Hearing Officer Memorandum”). Optical did not pay the forfeitures or participate in the subsequent hearing on May 25, 2004.

Because Optical Telephone Corp. neglected to file its 2001 annual return by March 31, 2002, the Department finds that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated from that date, up to September 5, 2002, when Optical filed its 2001 return late. In addition, because Optical neglected to file its 2002 annual return by March 31, 2003, the Department finds that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated from that date, up to April 5, 2004, when Optical filed its 2002 return late.

The Department also must consider whether the company’s refusal or neglect to file was unreasonable. G.L. c. 166, § 12. Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements

and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. Optical Telephone Corp. has failed to file timely annual returns, and has refused to pay the accrued statutory forfeitures associated with the late-filed returns, despite specific notice, in this docket, of the forfeitures owed via the Hearing Officer Memorandum.

Moreover, in addition to failing to appear on either of the two hearing dates, or respond to the Hearing Officer Memorandum, Optical failed to respond on a timely basis to notices from the Department's Telecommunications Division reminding the company that it failed to file its annual returns, and extending the filing deadline (Exhs. 3-01, 3-02). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to comply with the Commonwealth's statutory requirements, Optical's failure to respond in a timely manner compounds its neglect of its reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part of Optical Telephone Corp. to pay the statutory forfeitures is unreasonable. Therefore, in addition to the daily forfeiture, the additional \$500 forfeiture, as provided in G.L. c. 166, § 12, is applicable to Optical Telephone Corp. for failure to pay statutory forfeitures associated with the late-filed 2001 and 2002 annual returns.

The daily forfeiture for the 2001 annual return, accrued between March 31, 2002, and September 5, 2002, a total of 157 days overdue, is \$2,130. With the additional forfeiture of \$500, the total forfeiture Optical owes for 2001 is \$2,630. The daily forfeiture for the 2002 annual return, accrued between March 31, 2003, and April 5, 2004, a total of 370 days

overdue, is \$5,325. With the additional forfeiture of \$500, the total forfeiture Optical owes for 2002 is \$5,825. The total forfeiture Optical Telephone Corp. owes is therefore \$8,455.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that Massachusetts Local Telephone Co., Inc., and Optical Telephone Corp. shall immediately pay to the Commonwealth of Massachusetts the applicable statutory forfeitures for their late-filed 2001 and 2002 annual returns, consistent with this Order; and it is

FURTHER ORDERED that the findings reached herein are applicable to Massachusetts Local Telephone Co., Inc., individually, in docket D.T.E. 03-76-5; and it is

FURTHER ORDERED that the findings reached herein are applicable to Optical Telephone Corp., individually, in docket D.T.E. 03-76-10; and it is

FURTHER ORDERED that the findings of fact and directives herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

APPENDIX B

Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34
Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40